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Global Environment Facility: amendments to GEF Instrument

Note by the Administrator

Summary

The Executive Board of the United Nations Development Programme is requested to adopt two amendments to the Instrument for the Establishment of the Restructured Global Environment Facility (GEF Instrument).

The two amendments concern: (a) revision of the process for the appointment of the Chief Executive Officer/Chairperson and lengthening of the term of the CEO/Chair of the GEF to four years; and (b) confirmation of the availability of the GEF to serve as a financial mechanism of the United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa.

The two amendments were approved by consensus at the fourth meeting of the GEF Assembly, held in Punta del Este, Uruguay, from 25 to 26 May 2010. In accordance with paragraph 34 of the GEF Instrument, the amendments may become effective only after adoption by the GEF Implementing Agencies (UNDP, United Nations Environment Programme and the World Bank) and the Trustee (World Bank).

The present document describes the two amendments to the GEF Instrument proposed for adoption and outlines their rationale, and key implications for UNDP. It is recommended that the UNDP Executive Board decide to adopt the amendments.

Elements of a decision

The UNDP Executive Board may wish to adopt the amendments to the GEF Instrument as set forth in the decision of the fourth GEF Assembly and reproduced in the present note.

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I. Background

1. The Global Environment Facility was established in 1991 as a mechanism to provide both new and additional finance to developing countries to help meet the costs associated with their commitments under several multilateral environmental agreements.[1] The GEF was established as a partnership between three implementing agencies, the World Bank, the United Nations Development Programme (UNDP), and the United Nations Environment Programme (UNEP). The World Bank also serves as the Trustee of the GEF.

2. In 1994 the GEF was restructured, and a GEF Assembly, GEF Council and GEF Secretariat were established, as was the position of Chief Executive Officer and Chair. Although these GEF entities have not been directly conferred with any independent legal capacity, they play a key role in GEF governance. In 2003, seven new agencies were granted direct access to GEF resources as executing agencies (Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank, African Development Bank, International Fund for Agricultural Development, United Nations Industrial Development Organization and Food and Agriculture Organization of the United Nations). These agencies also contribute to the corporate policy of the GEF, alongside the three original implementing agencies.

3. Under the restructured GEF, the GEF Assembly performs the role of governing body and is comprised of delegates of all GEF member States (currently 180 parties). It is responsible for reviewing and evaluating the proposed replenishment amount for the next programming period of the GEF, together with any reform proposals regarding GEF policies and programming. The GEF Assembly is also responsible for considering and approving proposed amendments to the GEF Instrument, the set of rules by which the GEF operates.

4. Paragraph 34 of the GEF Instrument provides that: "Amendment or termination of the present instrument may be approved by consensus by the Assembly upon the recommendations of the Council, after taking into account the views of the Implementing Agencies and the Trustee, and shall become effective after adoption by the Implementing Agencies and the Trustee in accordance with their respective rules and regulations."

5. On 11 June 2010 the CEO/Chair of the GEF wrote to the UNDP Administrator informing the Administrator that the GEF Assembly had approved by consensus two amendments to the GEF Instrument and had invited the CEO/Chair to request the Implementing Agencies and Trustee to adopt the amendments in accordance with their respective rules and procedural requirements.

6. As of October 2010, two prior amendments have been made to the GEF Instrument. The first amendment was submitted to and adopted by the UNDP Executive Board at its annual session in 2003. The amendments concerned

[1] The environmental conventions are the Convention on Biological Diversity and the United Nations Framework Convention on Climate Change. The GEF subsequently was also selected to serve as financial mechanism for the Stockholm Convention on Persistent Organic Pollutants (2001). Although not linked formally to the Montreal Protocol on Substances That Deplete the Ozone Layer, GEF supports implementation of the Protocol in countries with economies in transition.

paragraphs 2, 3, 6 and 21 (f), which included land degradation and persistent organic pollutants as two new focal areas. The second amendment was submitted to and adopted by the UNDP Executive Board at its annual session in 2007. The amendment revised paragraph 17 so that GEF Council meetings would take place at the seat of the GEF Secretariat unless otherwise decided by the Council.

II. Amendments to the Instrument for the Establishment of the Restructured Global Environment Facility

7. Two amendments to the GEF Instrument, approved by consensus at the fourth meeting of the GEF Assembly, held in May 2010, are submitted to the Executive Board for its consideration and adoption.

8. The amendments are as set out in the following decision of the GEF Assembly:

"*The Fourth GEF Assembly,*

Recalling paragraph 34 of the Instrument for the Establishment of the Restructured Global Environment Facility,

Having considered the recommendations of the GEF Council for proposed amendments to the Instrument,

1. *Approves by consensus* the following amendment to the Instrument:

The Assembly reviewed two separate amendments to the Instrument proposed by the Council (document GEF/A.4/9). The Assembly approved the first proposed amendment to paragraph 21 of the Instrument concerning the GEF CEO Appointment and Term, i.e.

"The CEO shall be appointed to serve for four years on a full-time basis by the Council. The CEO may be reappointed by the Council for one additional four year term."

The Assembly also approved the second proposed amendment to paragraph 6 of the Instrument and agreed that a new subparagraph (b) be inserted in paragraph 6 and that the present paragraph 6 be renumbered as 6 (a) with the new paragraph 6 (b) to read as follows:

"The GEF shall be available to serve as a financial mechanism of the United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, particularly in Africa (UNCCD), pursuant to article 20, paragraph 2 (b), and article 21 of the Convention. The Council shall consider and approve arrangements to facilitate collaboration between the GEF and the UNCCD and among countries with respect to affected countries, particularly Africa".

9. For ease of reference, the revised provisions would be amended in the following way (bold text showing the new text):

Paragraph 21 of the Instrument would be amended to read in part:

"21. The GEF Secretariat shall service and report to the Assembly and the Council. The Secretariat, which shall be headed by the CEO/Chairperson of the Facility, shall be supported administratively by the World Bank and shall operate in

a functionally independent and effective manner. **The CEO shall be appointed to serve for four years on a full-time basis by the Council. The CEO may be reappointed by the Council for one additional four year term**".

In addition, a new subparagraph (b) should be inserted in paragraph 6, with the consequent renumbering of the present paragraph 6 as subparagraph 6 (a).

"The GEF shall be available to serve as a financial mechanism of the United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa , pursuant to article 20, paragraph 2(b), and article 21 of the Convention. The Council shall consider and approve arrangements to facilitate collaboration between the GEF and the UNCCD and among countries with respect to affected countries, particularly in Africa."

As a consequence of the insertion of a new subparagraph 6 (b), references to paragraph 6 in the GEF Instrument will be revised accordingly.

III. Recommendation and implications for UNDP

10. It is recommended that the UNDP Executive Board decide to adopt the amendments. The reasons for this recommendation are as articulated in GEF Assembly document GEF/A.4/9, entitled "Proposed Amendments to the GEF Instrument", the relevant sections of which are reproduced below.

A. Appointment and term of the CEO of the GEF

Document GEF/A.4/9 states:

"2. In June 2009, the GEF Council took a decision to recommend to the GEF Assembly an amendment to the GEF Instrument to eliminate the role of the Implementing Agencies in the appointment of the CEO and to lengthen the term of the CEO/Chairperson of the Facility to four years. This decision is reflected in paragraph 27 of the Joint Summary of the Chairs of the June 2009 GEF Council meeting.

"3. The primary reason to eliminate the role of the Implementing Agencies in the appointment of the CEO/Chairperson is because at times staff from one or more of the Agencies is nominated for the CEO/Chairperson position, raising conflict of interest questions if their own Agency is on the nominating Committee.

"4. There are persuasive reasons for moving from a three-year term with no term limits for the CEO/Chairperson to a four-year term with a limit of one reappointment. A term limit will help to keep the GEF a modern multilateral facility, which is not controlled for too long by any one person or viewpoint. A four instead of a three year term will provide the CEO/Chairperson with more time to implement reforms and/or policy decisions in an effective manner. Three years is a relatively short period in which to see the results of reforms or new policies, which may be why the terms of the heads of other IFIs are longer."

11. The key implication of this amendment for UNDP will be that it would no longer have the ability, together with the World Bank and UNEP, to recommend to

the GEF Council (after consultation with it) who should be appointed to the role of CEO of the GEF Secretariat. It would effectively represent a decrease in the role of the three implementing agencies in the governance of the GEF. As outlined in section I above, this represents a continuation of the trend towards effective autonomy on the part of the GEF and reflects a consensus among members of the GEF Assembly.

12. The current version of the GEF Instrument places no term limits on the CEO. The current CEO was appointed by the GEF Council for a three-year term commencing 15 July 2006. In November 2008, the CEO was reappointed for a second three-year term commencing 14 July 2009. Her current term expires in July 2012. The GEF Assembly provided no indication of whether or not this amendment was going to apply to the current as well as future CEOs.

B. GEF as a financial mechanism of the United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa

Document GEF/A.4/9 states:

> "5. In December 2006, the GEF Council took a decision to recommend to the GEF Assembly an amendment to the GEF Instrument to make the GEF available to serve as a financial mechanism of the UN Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (UNCCD). This proposed amendment closely reflects decisions at the Conference of the Parties to the UNCCD to designate the GEF as a financial mechanism of the Convention pursuant to articles 20 and 21 of the Convention."

13. *The United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa* was adopted in 1994 and entered into force in December 1996. It has 193 parties. The convention's objective is to combat desertification and mitigate the effects of drought in countries experiencing serious drought and/or desertification, particularly in Africa, through effective action at all levels, supported by international cooperation and partnership arrangements. Unlike certain other key multilateral environmental agreements, there is no dedicated financial mechanism or fund under the Convention.

14. The GEF has been supporting land degradation, primarily desertification and deforestation, as a focal area to support the Convention since 2003. However, the GEF Instrument needs to be amended to allow the GEF to formally serve as a financial mechanism of the Convention. This amendment should facilitate the development of synergies between the three key Rio de Janeiro Conventions and enhance the contribution of the GEF as a partnership organization. There are unlikely to be any material governance implications for UNDP with respect to this amendment.